

COURT  
TEXAS

**FILED**  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF TEXAS

OCT 16 2000

DAVID J. MALAND, CLERK

BY  
DEPUTY

www.pearsoned.com

**ANSWER OF THIRD-PARTY DEFENDANTS  
METROPOLITAN LIFE INSURANCE COMPANY AND  
UNITED HEALTHCARE INSURANCE COMPANY TO  
DEFENDANTS' FIRST AMENDED THIRD-PARTY COMPLAINT**

642784.1/SP2/58460/0263/10132000

57. No response is required to Paragraph 57.

## **II. PLAINTIFF'S ALLEGATIONS**

58. With regard to Paragraph 58, it is not necessary for Defendants to admit or deny whether Defendants/Third-Party Plaintiffs have correctly quoted from Plaintiff's Original Petition, because said Petition speaks for itself. Defendants are without sufficient knowledge or information to admit or deny that "Defendants/Third-Party Plaintiffs have denied all allegations of Plaintiffs," and therefore deny same.

## **III. ROLE OF "HEALTH CARRIERS"**

59. With regard to the allegations in Paragraph 59, Defendants are without sufficient knowledge or information to admit or deny whether each made medical payments (of an unidentified amount on an unidentified date) to one or more of Defendants/Third-Party Plaintiffs, or whether Defendants received unidentified refunds for any reason from one or more of Defendants/Third-Party Plaintiffs, and are further without sufficient knowledge or information to admit or deny the terms of any unidentified agreements, contracts and/or plans applicable to unidentified patients of Defendants/Third-Party Plaintiffs. Defendants state that such plans, agreements, or contracts, if any, speak for themselves. Defendants admit that at least one agreement or series of agreements that may be at issue is governed by 29 U.S.C. 1302 *et. seq.*, commonly known as ERISA, but Defendants are without sufficient knowledge or information to admit or deny whether all unidentified documents at issue, or claims asserted in connection therewith would be governed by 29 U.S.C. 1302 *et. seq.*, commonly known as ERISA. Defendants are without sufficient knowledge or information to admit or deny whether all unidentified agreements and contracts provide "discounts" as referenced in Plaintiff's Original Petition. Defendants are further without sufficient knowledge or information to admit or deny whether

Defendants/Third-Party Plaintiffs strive to comply and do comply with such unidentified agreements, contracts and/or plans in their billing practices. Defendants are not required to admit or deny whether Defendants/Third-Party Plaintiffs have correctly summarized Plaintiff's allegations, or their logical conclusion. Defendants are without sufficient knowledge or information to admit or deny whether Defendants or any other Health Carriers have requested, required, demanded and/or accepted refund payments from Defendants/Third-Party Plaintiffs, because such payments have not been identified.

#### **IV. CONTRIBUTION/INDEMNITY CLAIM**

60. Defendants deny the allegations of Paragraph 60, and deny that Defendants/Third-Party Plaintiffs are entitled to the relief requested therein.

#### **V. DECLARATORY RELIEF**

61. Defendants are without sufficient knowledge or information to admit or deny the terms of any agreements Defendants/Third-Party Plaintiffs have with any of the other Health Carriers, and would state that any such agreements or contracts with Defendants, which have not been identified by Defendants/Third-Party Plaintiffs, speak for themselves. Defendants are further without sufficient knowledge or information to admit or deny whether Defendants/Third-Party Plaintiffs have complied with such unidentified contracts or agreements, if any. Accordingly, Defendants deny the allegations in Paragraph 61, and further deny that Defendants/Third-Party Plaintiffs are entitled to any relief from Defendants as requested therein.

#### **VI. PRAYER**

62. Defendants deny that Defendants/Third-Party Plaintiffs are entitled to any relief whatsoever from Defendants, including that requested in Paragraph 62.

63. Defendants deny all allegations not specifically admitted herein.

64. Pleading further, if such be necessary, Defendants would show that some or all of Defendants/Third-Party Plaintiffs' claims may be barred by applicable statutes of limitations.

65. Pleading further, if such be necessary, Defendants would show that any damages allegedly sustained by Defendants/Third-Party Plaintiffs, if any be proved, where caused in whole or in part by the culpable conduct of Plaintiff, Third-Party Plaintiffs, or other third-parties or instrumentalities over whom Defendants, or either of them, had no right of control and, therefore, the amount of any damages otherwise recoverable against Defendants, or either of them, should be extinguished or reduced in comparative proportion to the culpable conduct of Plaintiff, Third-Party Plaintiffs or any third-parties.

66. Pleading further, if such be necessary, Defendants would show, on information and belief, that Defendants/Third-Party Plaintiffs' claims against Defendants are barred by the doctrines of estoppel, waiver, laches and unclean hands.

67. Pleading further, if such be necessary, Defendants would show that Defendants/Third-Party Plaintiffs' claims herein fail to state a claim upon which relief can be granted and therefore should be dismissed.

68. Pleading further, if such be necessary, Defendants would show that Defendants/Third-Party Plaintiffs' claims are subject to and/or bared by the terms of any relevant and applicable contracts or agreements.

## **VII. COUNTERCLAIM**

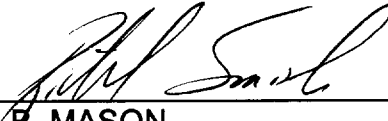
1. To the extent any of the Defendants/Third-Party Plaintiffs' claims relate to an employee welfare benefit claim, Defendants seek to recover from Defendants/Third-Party Plaintiffs all of their reasonable and necessary attorneys' fees and court costs pursuant to 29 U.S.C. §1132(g).

2. In addition, to the extent any of the Defendants/Third-Party Plaintiffs' claims relate to a MetraHealth provider agreement, Defendants are entitled to indemnity from Defendants/Third-Party Plaintiffs for all loss, damage or cost, including reasonable attorneys' fees arising from any of Defendants/Third-Party Plaintiffs' wrongful acts or omissions in performing such agreement.

WHEREFORE, PREMISES CONSIDERED, Third-Party Defendants Metropolitan Life Insurance Company and United Healthcare Insurance Company pray that upon final trial the Court enter judgment that Defendants/Third-Party Plaintiffs take nothing, dismissing Defendants/Third-Party Plaintiffs' suit with prejudice, assessing costs against Defendants/Third-Party Plaintiffs and for such other and further relief to which Metropolitan Life Insurance Company and United Healthcare Insurance Company may be justly entitled.

DATED: October 13, 2000.

Respectfully submitted,



WAYNE B. MASON  
Texas State Bar No. 13158950  
RICHARD L. SMITH, JR.  
State Bar No. 18671200  
STRASBURGER & PRICE, L.L.P.  
4300 Bank of America Plaza  
901 Main Street  
Dallas, Texas 75202  
Phone: 214-651-4300  
Fax: 214-651-4330

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the above and foregoing document has been forwarded to counsel of record on October 13, 2000.



RICHARD L. SMITH, JR.